

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

:: J U D G M E N T ::

**D.B. CRIMINAL JAIL APPEAL NO.217/2006
(Nathiya Vs. State of Rajasthan)**

**D.B. CRIMINAL APPEAL AGAINST THE
JUDGMENT DATED 8.2.2006 PASSED
BY THE LEARNED ADDITIONAL
SESSIONS JUDGE (FAST TRACK)
NO.1, UDAIPUR IN SESSIONS CASE
NO.137/2005.**

DATE OF JUDGMENT : 27th NOVEMBER, 2007

P R E S E N T

**HON'BLE MR. JUSTICE BHAGWATI PRASAD
HON'BLE MR. JUSTICE DEO NARAYAN THANVI**

Mr. Dharendra Singh, for the appellant.
Mr. J.P.S. Choudhary, Public Prosecutor.

BY THE COURT : (PER MR. THANVI,J.)

This jail appeal is directed against the judgment dated 8.2.2006 passed by the learned Additional Sessions Judge (Fast Track) No.1, Udaipur, whereby, he convicted accused appellant Nathiya for offence under Section 302 IPC and sentenced him to imprisonment for life and to pay a fine of Rs.2000/-, in default of payment of fine to further undergo six months' rigorous

imprisonment. However, accused appellant Nathiya was acquitted for offence under Section 325 IPC.

The story as put forth in the oral report of one Devi Lal Meena was that at the house of accused appellant Nathiya, which is adjacent to his house, wife and mother of Nathiya were crying. He went there and saw one '*bans lathi*' in the hand of accused appellant Nathiya, with which he was beating his wife Manki and was pulling her in the chowk. When his mother intervened, he also inflicted lathi blow on her. Thereafter, he left in the morning. The mother of accused appellant Nathiya told that on account of beating, Nathiya's wife has died. He thereupon called Vasiya and Bhagwana and saw that dead body of Manki was lying in the naked condition.

Upon this, police registered the case and started investigation. After usual investigation, police filed challan. Accused appellant Nathiya was charged for offence under Section 302 and 325 IPC, to which he pleaded not guilty. Prosecution examined 12 witnesses. Statement of accused appellant was recorded under Section 313 Cr.P.C. He led no evidence in defence. After hearing the arguments, the learned trial Judge convicted accused appellant as indicated above.

During examination, Devi Lal who lodged the FIR Ex.P-2 has been turned hostile by the prosecution. Dhanki, who is the mother of accused appellant Nathiya has also been turned hostile as she said that being unable to see from her eyes, she has not seen the incident. Of-course, she has said that one lathi blow was given but who inflicted it, she cannot say. Likewise, the witnesses of after incident namely PW-3 Bhagwana and PW-4 Vasiya have also turned hostile. PW-5 Dhaniya and PW-6 Kewa have also not supported the prosecution case except the signatures on the recovery memo and site plans. PW-7 Pankaj Kumar is the witness of photographs Ex.P-16A to Ex.P-20A, which he took of the deceased lady. PW-10 Mohd. Arif is the doctor, who conducted the post mortem vide Ex.P-18. PW-8, PW-9, PW-11 and PW-12 are the police officers.

Upon this evidence, the learned trial Judge came to the conclusion that though the eye witnesses of the case are hostile but from the recovery of ghaghara and shirt, which were belonging to the deceased and accused appellant, it is established from the FSL report that it was accused appellant Nathiya who killed his wife Manki in the night of 18.5.05. In our view, this finding of the learned trial Judge is based on conjectures and against the established principles of criminal jurisprudence. In a criminal trial, when the direct evidence is

available with the prosecution and if it does not support the case, then merely on the basis of circumstantial evidence, conviction cannot be recorded. Circumstances are to be considered only in established chain, when there is no direct evidence. When eye witnesses including the informant have been turned hostile, there was no legal justification to connect the accused appellant with the commission of offence like murder merely on the basis that there was 'A' group blood on both ghaghara and shirt belonging to the deceased and the accused appellant. Whether the accused appellant was of the same blood group or not, prosecution has not been able to led any evidence on this issue. Chemical Report Ex.P-24, which is admissible under Section 293 of the Code of Criminal Procedure of-course says that there was blood group 'A' on Ex.-3 and Ex.-4 ghaghara and shirt respectively but what was the blood group of deceased and of the accused has not been established. Further, on the lathi, which is said to have been recovered at the instance of accused appellant, no blood was found on it. Even, the learned trial Judge has also disbelieved the recovery of lathi. In our view, the finding of the learned trial Judge is perverse to the record and cannot be sustained.

Consequently, this appeal is allowed. The judgment dated 8.2.2006 passed by the learned Additional Sessions Judge (Fast

Track) No.1, Udaipur, convicting accused appellant Nathiya for offence under Section 302 IPC is set aside. Accused appellant Nathiya is acquitted from the charges levelled against him. He is in jail. He shall be released forthwith, if not required in any other case .

(DEO NARAYAN THANVI),J.

(BHAGWATI PRASAD),J.

ms rathore